

AMENDED IN ASSEMBLY JUNE 10, 2002

AMENDED IN SENATE APRIL 2, 2002

SENATE BILL

No. 1914

**Introduced by Committee on Insurance (Senators Speier
(Chair), Escutia, Figueroa, Johnson, Scott, and Soto)**

February 22, 2002

~~An act to amend Section 11019.9 of the Government Code, and to amend Section 125145 of the Health and Safety Code, relating to health. An act to add and repeal Section 130311.5 of the Health and Safety Code, relating to health.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1914, as amended, Committee on Insurance. Health.

~~(1) Existing~~

~~Existing~~ federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes requirements to safeguard the privacy of medical information. The ~~act~~ HIPAA specifies that its provisions ~~supercede~~ *supersede* any contrary provision of state law, subject to a determination by the Secretary of the United States Department of Health and Human Services that a contrary state law provision is necessary for specified reasons *exceptions*. Existing *state* law also requires each state department and state agency to enact and maintain a permanent privacy policy in adherence with the Information Practices Act of 1977 and is required to include in that policy various provisions related to its collections, retention, and disclosure of personally identifiable information, the Health Insurance Portability and Accountability Implementation Act of 2001, provides for the implementation of the HIPAA's requirements in this state.

~~The bill would also provide that those provisions relating to a state department's or agency's permanent privacy policy or the Information Practices Act of 1977 that are preempted by the HIPAA shall be inapplicable to the extent of that preemption, except that the remainder of those provisions and the act are in full force and effect.~~

~~This bill would declare the intent of the Legislature to repeal any statute that is preempted by HIPAA and that will not be included in a request made by the state for an exception determination from the Secretary of the United States Department of Health and Human Services.~~

~~(2) Existing law creates the Holden-Moscone-Garamendi Genetically Handicapped Person's Program that is administered by the Director of Health Services. Under existing law, the director is required to appoint an Advisory Committee on Genetically Handicapped Person's Program and to seek the committee's advice with respect to regulations adopted pursuant to the program.~~

~~This bill would make nonsubstantive changes to these provisions.~~

~~This bill would make any provision of state law concerning personal medical information not applicable to the extent that it is superseded by HIPAA.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. It is the intent of the Legislature to repeal those~~
- 2 *SECTION 1. (a) The Legislature declares that the right of*
- 3 *individuals to privacy of their personal medical information is a*
- 4 *fundamental right of the people of California.*
- 5 *(b) The Legislature further makes the following findings:*
- 6 *(1) The people of California should be provided with the*
- 7 *highest possible level of protection of the privacy of their personal*
- 8 *medical information and records. The people of California should*
- 9 *also be provided with the highest possible level of access to their*
- 10 *own personal medical information and records and to information*
- 11 *about their medical information privacy rights and the privacy*
- 12 *practices of their health care providers and insurers.*
- 13 *(2) Certain federal regulations that implement the federal*
- 14 *Health Insurance Portability and Accountability Act of 1996*



(HIPAA) will supersede less stringent state laws pertaining to the privacy of personal medical information.

(3) California is required to comply with the provisions of HIPAA on or before April 14, 2003.

SEC. 2. Section 130311.5 is added to the Health and Safety Code, to read:

130311.5. (a) Any provision of state law concerning personal medical information that is preempted by HIPAA pursuant to Section 160.203 of Title 45 of the Code of Federal Regulations, shall not be applicable to the extent of that preemption by HIPAA, and the remainder of the provisions of that state law shall remain in full force and effect.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date. ~~statutes, or parts of statutes, that are preempted by the federal Health Insurance Portability and Accountability Act of 1996 and that will not be included in a request made by California for an exception determination from the Secretary of the United States Department of Health and Human Services.~~

SEC. 2. ~~Section 11019.9 of the Government Code is amended to read:~~

~~11019.9. Each state department and state agency shall enact and maintain a permanent privacy policy, in adherence with the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code), that includes, but is not limited to, the following principles:~~

~~(a) Personally identifiable information is only obtained through lawful means.~~

~~(b) The purposes for which personally identifiable data are collected are specified at or prior to the time of collection, and any subsequent use is limited to the fulfillment of purposes not inconsistent with those purposes previously specified.~~

~~(c) Personal data shall not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the subject of the data, or as authorized by law or regulation.~~

~~(d) Personal data collected must be relevant to the purpose for which it is collected.~~

~~(e) The general means by which personal data is protected against loss, unauthorized access, use modification or disclosure shall be posted, unless that disclosure of general means would compromise legitimate state department or state agency objectives or law enforcement purposes.~~

~~(f) Each state department or state agency shall designate a position within the department or agency, the duties of which shall include, but not be limited to, responsibility for the privacy policy within that department or agency.~~

~~(g) Any provision of this section or the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) that is preempted by the federal Health Insurance Portability and Accountability Act (HIPAA) (Public Law 104-191), pursuant to Part 160.203 of Title 45 of the Code of Federal Regulations, shall be inapplicable to the extent of that preemption by the HIPPA, except that the remainder of the provisions of this section or the Information Practices Act of 1977 shall be in full force and effect.~~

~~SEC. 3. Section 125145 of the Health and Safety Code is amended to read:~~

~~125145. The director shall appoint an 11-member Advisory Committee on Genetically Handicapped Person's Program composed of professional and consumer representatives. The members shall serve without compensation and at the discretion of the director. The director shall seek the advice of the advisory committee with respect to regulations to be adopted pursuant to this article.~~